



**Office of the Attorney General
State of Texas**

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ATTORNEY GENERAL

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Honorable James W. Carr
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Hallettsville, Texas 77964

Honorable David M. Motley
Kerr County Attorney
County Courthouse, Suite B20
700 East Main Street
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Letter Opinion No. 96-144

Re: Proper jurisdiction in Kerr County and Lavaca County of prosecutions under Alcoholic Beverage Code sections 106.02, 106.04, and 106.05, which prohibit the possession, consumption, and purchase of alcoholic beverages by persons under the age of twenty-one years (ID# 39308, RQ-810)

Dear Mr. Carr and Mr. Motley:

You both ask which court or courts in your counties have original jurisdiction of prosecutions of criminal cases filed under Alcoholic Beverage Code ("code") sections 106.02, 106.04, and 106.05, which prohibit the purchase, consumption, or possession of an alcoholic beverage by a person who is younger than twenty-one years. Today, in partial response to your questions, we have issued Attorney General Opinion DM-427, which analyzes amendments to the statutes governing the criminal jurisdiction of justice courts and municipal courts. See Act of May 24, 1995, 74th Leg., R.S., ch. 449, 1995 Tex. Gen. Laws 3150, 3150. In that opinion we have concluded that the justice courts and municipal courts do have jurisdiction of prosecutions for violations of code sections 106.02, 106.04, and 106.05 because the sanctions that may be imposed for such violations include only a fine and a remedial sanction not consisting of confinement or imprisonment. Based on that opinion, we answer the questions you pose as follows.

Various courts in this state have criminal jurisdiction. Article 4.01 of the Code of Criminal Procedure provides as follows:

The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. Courts of appeals;
3. The district courts;
4. The criminal district courts;

5. The magistrates appointed by the judges of the district courts of Bexar County, Dallas County, Tarrant County, or Travis County that give preference to criminal cases and the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County;
6. The county courts;
7. All county courts at law with criminal jurisdiction;
8. County criminal courts;
9. Justice courts;
10. Municipal courts; and
11. The magistrates appointed by the judges of the district courts of Lubbock County.

Only a few of the foregoing courts may have original jurisdiction of the subject code violations in your counties. Items 5 and 11, which specifically name other counties, obviously do not apply to Kerr County or Lavaca County. We also can eliminate item 1, the Texas Court of Criminal Appeals, which has no original jurisdiction of criminal actions. *See* Tex. Const. art. 5, § 5; Code Crim. Proc. art. 4.04. Nor do the courts of appeals have such jurisdiction, so item 2 does not apply. *See* Tex. Const. art. 5, § 6; Code Crim. Proc. art. 4.03. Neither county has a criminal district court, *see* Gov't Code ch. 24, subch. E (establishing criminal district courts only in counties of Dallas, Tarrant, and Jefferson), or a county criminal court, *see id.* §§ 25.1351 ("Kerr County has one statutory county court, the County Court at Law of Kerr County"), .1441-.1450 (reserved for Lavaca County), so items 4 and 8 are inapplicable.

Items 3, 6, 7, 9, and 10 merit extra consideration. Kerr County and Lavaca County (as do all counties in the state) lie within judicial districts and thus have district courts, *see* Tex. Const. art. 5, § 7 ("The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution"); Gov't Code §§ 24.126 (25th Judicial District, which includes Lavaca County), .127 (Second 25th Judicial District, which includes Lavaca County), .275 (216th Judicial District, which includes Kerr County), .377 (198th Judicial District, which includes Kerr County). The district courts do have some original criminal jurisdiction: "District Court jurisdiction consists of exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies, except in cases where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body." Tex. Const. art. 5, § 8; *accord* Gov't Code § 24.007 ("The district court has the jurisdiction provided by Article V, Section 8, of the Texas

Constitution.”). Because the original criminal jurisdiction of the district courts is residual, we will consider other possible courts of exclusive original jurisdiction to determine whether any jurisdiction of prosecutions under code section 106.02, 106.04, or 106.05 is left to the district courts.

Regarding item 6, every county of this state has a constitutional county court. Tex. Const. art. 5, § 15. Constitutional county courts have “jurisdiction as provided by law.” *Id.* art. 5, § 16. The criminal jurisdiction of constitutional county courts is established in section 26.045 of the Government Code and article 4.07 of the Code of Criminal Procedure. Section 26.045 provides, in relevant part, as follows:

(a) Except as provided by Subsection (c), a county court has exclusive original jurisdiction of misdemeanors other than misdemeanors involving official misconduct and cases in which the highest fine that may be imposed is \$500 or less.

....

(c) A county court that is in a county with a criminal district court does not have any criminal jurisdiction. This subsection does not affect the jurisdiction of a statutory county court.

Subsection (c) of section 26.045 does not apply to Kerr County or Lavaca County because neither county has a criminal district court. *See* Gov’t Code ch. 24, subch. E (establishing criminal district courts only in counties of Dallas, Tarrant, and Jefferson). Article 4.07 provides as follows:

The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed five hundred dollars.

Thus, section 26.045 of the Government Code and article 4.07 of the Code of Criminal Procedure grant to constitutional county courts jurisdiction of all misdemeanors punishable by a maximum fine of more than five hundred dollars, except for any such misdemeanors that fall within the exclusive jurisdiction of the justice courts. We have found no grant of exclusive jurisdiction to the justice courts in any criminal matters, so this exception appears not to be currently operative.

Regarding item 7, statutory county courts exist by virtue of the legislature’s constitutional power to “establish such other courts as it may deem necessary and [to] prescribe the jurisdiction and organization thereof,” *id.* art. V, § 1. The legislature has granted to statutory county courts “jurisdiction over all causes and proceedings, civil and criminal, original and appellate, prescribed by law for county courts.” Gov’t Code § 25.0003(a). “Kerr County has one statutory county court, the County Court at Law of

Kerr County.” *Id.* § 25.1351. The criminal jurisdiction of the County Court at Law of Kerr County does not vary from the general jurisdiction provided in section 25.0003(a). *See id.* § 25.1352 (Kerr County Court at Law provisions). Lavaca County has no statutory county court. *See id.* §§ 25.1451-.1460 (reserved for Lavaca County).

First-time violations of sections 106.02, 106.04, and 106.05 do not fall within the jurisdiction of the constitutional or statutory county courts, but subsequent violations do fall within the jurisdiction of these courts. The fine range for a first conviction under section 106.02, 106.04, or 106.05 is \$25 to \$200, *see* Alco. Bev. Code §§ 106.02(b), .04(c), .05(c), but the fine range for a subsequent conviction under section 106.02 is \$250 to \$1,000, *see id.* § 106.02(c), while the fine range for a subsequent conviction under section 106.04 or 106.05 is \$500 to \$1,000, *see id.* §§ 106.04(d), .05(d). The constitutional county courts of Kerr County and Lavaca County and the County Court at Law of Kerr County, again, do not have original jurisdiction of misdemeanors punishable by a maximum fine of five hundred dollars or less. *See* Gov’t Code §§ 25.0003(a), .1352, 26.045; Code Crim. Proc. art. 4.07.

The original jurisdiction that the constitutional and statutory county courts have of subsequent violations of sections 106.02, 106.04, and 106.05 is exclusive because subsequent violations are punishable by a maximum fine of more than five hundred dollars. *See* Gov’t Code §§ 25.0003(a), .1352, 26.045. Therefore, the district courts of the judicial districts that include Kerr County and Lavaca County do not have jurisdiction of prosecutions for subsequent violations of sections 106.02, 106.04, and 106.05 because these offenses fall within the exception for “cases where exclusive . . . jurisdiction [is] conferred by . . . other law on some other court.” Tex. Const. art. 5, § 8; *accord* Gov’t Code § 24.007.

Regarding items 9 and 10, the justice courts and the municipal courts, we considered those courts in Attorney General Opinion DM-427 and concluded that “[t]he justice courts and the municipal courts to which the Seventy-fourth Legislature’s House Bill No. 1648 applies do have jurisdiction of prosecutions for violations of Alcoholic Beverage Code sections 106.02, 106.04, and 106.05.” Attorney General Opinion DM-427 (1996) at 8; *see* Act of May 24, 1995, 74th Leg., R.S., ch. 449, 1995 Tex. Gen. Laws 3150, 3150.

There is, however, no provision that makes the justice-court or municipal-court jurisdiction of the subject offenses exclusive. *See* Code Crim. Proc. arts. 4.11, .14; Gov’t Code §§ 29.003, 30.035, .263, 653. Therefore, the district courts of Kerr and Lavaca counties do have concurrent jurisdiction of first-time offenses of sections 106.02, 106.04, and 106.05. *See* Tex. Const. art. 5, § 8; Gov’t Code § 24.007.

S U M M A R Y

First-time violations of Alcoholic Beverage Code sections 106.02, 106.04, and 106.05 do not fall within the jurisdiction of the constitutional or statutory county courts of Kerr and Lavaca Counties, but subsequent violations do fall within the exclusive jurisdiction of these courts. The justice courts and the municipal courts of Kerr and Lavaca counties to which the Seventy-fourth Legislature's House Bill No. 1648 applies do have jurisdiction of prosecutions for violations of Alcoholic Beverage Code sections 106.02, 106.04, and 106.05.

The district courts of Kerr and Lavaca counties do have jurisdiction of first-time offenses of sections 106.02, 106.04, and 106.05, but do not have jurisdiction of prosecutions for subsequent violations of sections 106.02, 106.04, and 106.05.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Gilpin". The signature is written in a cursive, flowing style.

Rick Gilpin
Deputy Chief
Opinion Committee